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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,703	01/22/2001	Waifong Liew Anton	Rev 96-3B	2009

7590                    04/30/2002

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[REDACTED] EXAMINER

WANG, SHENGJUN

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 04/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/765,703	ANTON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shengjun Wang	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 February 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 21-40 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

Receipt of applicants' remarks and the Declaration of Ann Ureneck submitted February 15, 2002 is acknowledged.

### *Claim Objections*

1. Claims 32 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Particularly, the R1 in the polymer has already been defined in claim 21. Applicants' remarks submitted February 15, 2002 have been considered, but are not persuasive. Specifically, claim 32 does not particularly limit M. Therefore, M in claim 32 has the identical scope as it has in claim 21.

### *Claim Rejections 35 U.S.C. 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 21-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castrogiovanni et al. (US 5,505,937) in view of Tanabe et al. (JP abstract, JP 07187951) and Kumar et al. (US 5,468,477) for reasons set forth in the prior office action.

### *Response to the Arguments*

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4. The declaration filed on February 15, 2002 under 37 CFR 1.131 is sufficient to overcome the Schehlmann et al. reference. The declaration is persuasive to over come the rejection based on Schehlmann et al.

5. Applicants remarks regarding the rejection under 35 U.S.C. 103 over Castrogiovanni et al. (US 5,505,937) in view of Tanabe et al. (JP abstract, JP 07187951) and Kumar et al. (US 5,468,477) have been fully considered, but are not persuasive for reasons discussed below.

6. Applicants' assertion regarding Castrogiovanni reference is in error. Particularly, notice in 1241 office Gazette Patent Office 96(December 26, 2000) is related to § 102 (e) type references. Castrogiovanni reference (published in April 1996) is a § 102 (b) type reference. Therefore, the new rule is not applicable to Castrogiovanni reference. Castrogiovanni reference is a proper prior art.

7. Regarding the remarks that Tanabe does not expressly teach the particularly, glass transition temperature (Tg) of polymethylmethacrylate, note Kumar teaches that polyacrylate or derivative are known to have Tg above 40 oC. Further, Tanabe employs the exact same polymer employed herein, poly methymethacrylate.

8. Regarding the remarks that Tanabe does not expressly teach that the methacrylate polymer may be employed in lipstick, not Tanabe expressly teach that poly methylmethacrylate may be employed in a cosmetic composition as film forming agent, wherein the cosmetic composition can be prepared as a lipstick. See the abstract of Tanabe.

9. Applicants' rebuttal arguments of Kumar references are not persuasive. Particularly, Kumar reference is cited to show that polyisobornyl methacrylate is similarly useful as

polymethyl methacrylate particularly, in term of their physical properties such as glass transition temperature. See the prior office action.

Nothing unobvious is seen in the claimed invention.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Examiner



Shengjun Wang

April 26, 2002

RUSSELL TRAVERS  
PRIMARY EXAMINER  
GROUP 1200